

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ERIC GORDON SNYDER,)
Plaintiff,) No. CV-11-16-JPH
v.) ORDER GRANTING DEFENDANT'S
MICHAEL J. ASTRUE, Commissioner) MOTION FOR SUMMARY JUDGMENT
of Social Security,)
Defendant.)
)
)

BEFORE THE COURT are cross-motions for summary judgment noted for hearing without oral argument on May 18, 2012, ECF No. 12, 17. Attorney Gary R. Penar represents plaintiff; Special Assistant United States Attorney Kathryn A. Miller represents the Commissioner of Social Security (defendant). The parties have consented to proceed before a magistrate judge, ECF No. 6. After reviewing the administrative record and the briefs filed by the parties, the court **GRANTS** defendant's motion for summary judgment, **ECF No. 17**.

JURISDICTION

Plaintiff protectively applied for disability insurance benefits (DIB) and supplemental security income (SSI) benefits on April 4, 2008. Both allege disability beginning October 13, 2006 (Tr. 106-108). The applications were denied initially and on reconsideration (Tr. 47-50, 54-58).

ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT

1 At a hearing before an Administrative Law Judge (ALJ) on
2 September 2, 2009, plaintiff, represented by counsel, and a
3 vocational expert testified (Tr. 23-42). On December 31, 2009, the
4 ALJ issued an unfavorable decision (Tr. 11-20). The Appeals
5 Council denied review on December 3, 2010 (Tr. 1-4), making the
6 ALJ's decision the final decision of the Commissioner and
7 appealable to the district court pursuant to 42 U.S.C. § 405(g).
8 Plaintiff filed this action for judicial review on January 13,
9 2011. ECF No. 1, 4.

STATEMENT OF FACTS

11 The facts have been presented in the administrative hearing
12 transcript, the ALJ's decision, and the briefs of the parties.
13 They are very briefly summarized here.

14 Plaintiff was 32 years old at onset. He graduated from high
15 school and worked as a janitor from 1992 until October 2006 (Tr.
16 26-27, 117). He stopped working because he "had a mental
17 breakdown." Plaintiff's claim is based solely on mental
18 limitations (Tr. 27, 116).

SEQUENTIAL EVALUATION PROCESS

20 The Social Security Act (the Act) defines disability as the
21 "inability to engage in any substantial gainful activity by reason
22 of any medically determinable physical or mental impairment which
23 can be expected to result in death or which has lasted or can be
24 expected to last for a continuous period of not less than twelve
25 months." 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The Act also
26 provides that a Plaintiff shall be determined to be under a
27 disability only if any impairments are of such severity that a
28 plaintiff is not only unable to do previous work but cannot,

1 considering plaintiff's age, education and work experiences,
2 engage in any other substantial gainful work which exists in the
3 national economy. 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B).
4 Thus, the definition of disability consists of both medical and
5 vocational components. *Edlund v. Massanari*, 253 F.3d 1152, 1156
6 (9th Cir.2001).

7 The Commissioner has established a five-step sequential
8 evaluation process for determining whether a person is disabled.
9 20 C.F.R. §§ 404.1520, 416.920. Step one determines if the person
10 is engaged in substantial gainful activities. If so, benefits are
11 denied. 20 C.F.R. §§ 404.1520(a)(4)(I), 416.920(a)(4)(I). If not,
12 the decision maker proceeds to step two, which determines whether
13 plaintiff has a medically severe impairment or combination of
14 impairments. 20 C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii).

15 If plaintiff does not have a severe impairment or combination
16 of impairments, the disability claim is denied. If the impairment
17 is severe, the evaluation proceeds to the third step, which
18 compares plaintiff's impairment with a number of listed
19 impairments acknowledged by the Commissioner to be so severe as to
20 preclude substantial gainful activity. 20 C.F.R. §§
21 404.1520(a)(4)(ii), 416.920(a)(4)(ii); 20 C.F.R. § 404 Subpt. P,
22 App. 1. If the impairment meets or equals one of the listed
23 impairments, plaintiff is conclusively presumed to be disabled.
24 If the impairment is not one conclusively presumed to be
25 disabling, the evaluation proceeds to the fourth step, which
26 determines whether the impairment prevents plaintiff from
27 performing work which was performed in the past. If a plaintiff is
28 able to perform previous work, that Plaintiff is deemed not

1 disabled. 20 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv). At
 2 this step, plaintiff's residual functional capacity (RFC)
 3 assessment is considered. If plaintiff cannot perform this work,
 4 the fifth and final step in the process determines whether
 5 plaintiff is able to perform other work in the national economy in
 6 view of plaintiff's residual functional capacity, age, education
 7 and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v),
 8 416.920(a)(4)(v); *Bowen v. Yuckert*, 482 U.S. 137 (1987).

9 The initial burden of proof rests upon plaintiff to establish
 10 a *prima facie* case of entitlement to disability benefits.

11 *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th Cir.1971); *Meanel v.*
 12 *Apfel*, 172 F.3d 1111, 1113 (9th Cir.1999). The initial burden is
 13 met once plaintiff establishes that a physical or mental
 14 impairment prevents the performance of previous work. *Hoffman v.*
 15 *Heckler*, 785 F.3d 1423, 1425 (9th Cir.1986). The burden then
 16 shifts, at step five, to the Commissioner to show that (1)
 17 plaintiff can perform other substantial gainful activity and (2) a
 18 "significant number of jobs exist in the national economy" which
 19 plaintiff can perform. *Kail v. Heckler*, 722 F.2d 1496, 1498 (9th
 20 Cir.1984); *Tackett v. Apfel*, 180 F.3d 1094, 1099 (9th Cir.1999).

21 **STANDARD OF REVIEW**

22 Congress has provided a limited scope of judicial review of a
 23 Commissioner's decision. 42 U.S.C. § 405(g). A Court must uphold
 24 the Commissioner's decision, made through an ALJ, when the
 25 determination is not based on legal error and is supported by
 26 substantial evidence. See *Jones v. Heckler*, 760 F.2d 993, 995 (9th
 27 Cir.1985); *Tackett*, 180 F.3d at 1097 (9th Cir.1999). "The
 28 [Commissioner's] determination that a plaintiff is not disabled

1 will be upheld if the findings of fact are supported by
 2 substantial evidence." *Delgado v. Heckler*, 722 F.2d 570, 572 (9th
 3 Cir.1983)(citing 42 U.S.C. § 405(g)). Substantial evidence is more
 4 than a mere scintilla, *Sorenson v. Weinberger*, 514 F.2d 1112, 1119
 5 n. 10 (9th Cir.1975), but less than a preponderance. *McAllister*
 6 *v. Sullivan*, 888 F.2d 599, 601-602 (9th Cir.1989); *Desrosiers v.*
 7 *Secretary of Health and Human Services*, 846 F.2d 573, 576 (9th
 8 Cir.1988). Substantial evidence "means such evidence as a
 9 reasonable mind might accept as adequate to support a conclusion."
 10 *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (citations
 11 omitted). "[S]uch inferences and conclusions as the [Commissioner]
 12 may reasonably draw from the evidence" will also be upheld. *Mark*
 13 *v. Celebreeze*, 348 F.2d 289, 293 (9th Cir.1965). On review, the
 14 Court considers the record as a whole, not just the evidence
 15 supporting the decision of the Commissioner. *Weetman v. Sullivan*,
 16 877 F.2d 20, 22 (9th Cir.1989)(quoting *Kornock v. Harris*, 648 F.2d
 17 525, 526 (9th Cir.1980)).

18 It is the role of the trier of fact, not this Court, to
 19 resolve conflicts in evidence. *Richardson*, 402 U.S. at 400. If
 20 evidence supports more than one rational interpretation, the Court
 21 may not substitute its judgment for that of the Commissioner.
 22 *Tackett*, 180 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579
 23 (9th Cir.1984). Nevertheless, a decision supported by substantial
 24 evidence will still be set aside if the proper legal standards
 25 were not applied in weighing the evidence and making the decision.
 26 *Brawner v. Secretary of Health and Human Services*, 839 F.2d 432,
 27 433 (9th Cir.1987). Thus, if there is substantial evidence to
 28 support the administrative findings, or if there is conflicting

1 evidence that will support a finding of either disability or
 2 nondisability, the finding of the Commissioner is conclusive.

3 *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir.1987).

4 **ALJ'S FINDINGS**

5 The ALJ found plaintiff's DIB insurance was effective through
 6 December 31, 2011 (Tr. 11, 13). At step one, he found plaintiff
 7 did not work at substantial gainful activity levels after onset
 8 (Tr. 13). At steps two and three, the ALJ found plaintiff suffers
 9 from depression and anxiety, impairments that are severe but do
 10 not medically meet or equal a listed impairment (Tr. 13-14). At
 11 step four, relying on a vocational expert, the ALJ found plaintiff
 12 could perform his past job as a janitor (Tr. 19). The step four
 13 finding was determinative. The ALJ found Mr. Snyder was not
 14 disabled as defined by the Social Security Act during the relevant
 15 period (Tr. 20).

16 **ISSUES**

17 Plaintiff alleges the ALJ failed to credit treating source
 18 opinions. He alleges the ALJ's credibility assessment is flawed.
 19 And he alleges the RFC and step four finding are unsupported. ECF
 20 No. 13 at 11-21.

21 The Commissioner responds that the ALJ properly weighed
 22 opinion evidence and credibility, and plaintiff's latter
 23 allegations simply restate the first, that the ALJ failed to
 24 properly weigh medical opinions. ECF No. 18 at 7-21.

25 **DISCUSSION**

26 **A. Weighing medical evidence - standards**

27 In social security proceedings, the claimant must prove the
 28 existence of a physical or mental impairment by providing medical

1 evidence consisting of signs, symptoms, and laboratory findings;
 2 the claimant's own statement of symptoms alone will not suffice.
 3 20 C.F.R. § 416.908. The effects of all symptoms must be evaluated
 4 on the basis of a medically determinable impairment which can be
 5 shown to be the cause of the symptoms. 20 C.F.R. § 416.929. Once
 6 medical evidence of an underlying impairment has been shown,
 7 medical findings are not required to support the alleged severity
 8 of symptoms. *Bunnell v. Sullivan*, 947 F.2d 341, 345 (9th Cir.
 9 1991).

10 A treating physician's opinion is given special weight
 11 because of familiarity with the claimant and the claimant's
 12 physical condition. *Fair v. Bowen*, 885 F.2d 597, 604-05 (9th Cir.
 13 1989). However, the treating physician's opinion is not
 14 "necessarily conclusive as to either a physical condition or the
 15 ultimate issue of disability." *Magallanes v. Bowen*, 881 F.2d 747,
 16 751 (9th Cir.1989)(citations omitted). More weight is given to a
 17 treating physician than an examining physician. *Lester v. Chater*,
 18 81 F.3d 821, 830 (9th Cir.1995). Correspondingly, more weight is
 19 given to the opinions of treating and examining physicians than to
 20 nonexamining physicians. *Benecke v. Barnhart*, 379 F.3d 587, 592
 21 (9th Cir.2004). If the treating or examining physician's opinions
 22 are not contradicted, they can be rejected only with clear and
 23 convincing reasons. *Lester*, 81 F.3d at 830. If contradicted, the
 24 ALJ may reject an opinion if he states specific, legitimate
 25 reasons that are supported by substantial evidence. See *Flaten v.*
 26 *Secretary of Health and Human Serv.*, 44 F.3d 1453, 1463 (9th Cir.
 27 1995).

28 In addition to the testimony of a nonexamining medical

1 advisor, the ALJ must have other evidence to support a decision to
 2 reject the opinion of a treating physician, such as laboratory
 3 test results, contrary reports from examining physicians, and
 4 testimony from the claimant that was inconsistent with the
 5 treating physician's opinion. *Magallanes v. Bowen*, 881 F.2d 747,
 6 751-52 (9th Cir.1989); *Andrews v. Shalala*, 53 F.3d 1042-43 (9th
 7 Cir.1995).

8 **B. Treating source opinions**

9 Plaintiff alleges the ALJ failed to give at least specific
 10 and valid reasons for rejecting the opinions of two treating
 11 doctors, ECF No. 13 at 11-16. Plaintiff alleges the ALJ failed to
 12 credit a GAF of 45 assessed by Matthew Layton, M.D., in May 2007,
 13 and a diagnosis of "severe double depression with schizotypal
 14 symptoms," in September 2008 by Tanya Keeble, M.D. (ECF No. 13 at
 15 13, referring to Tr. 217-219 and 350-351).

16 The Commissioner answers that the ALJ summarized the facts
 17 and evidence and considered these opinions, as well as the opinion
 18 of examining psychologist Joyce Everhart, Ph.D. (ECF No. 18 at 8-
 19 10, 12-13).

20 The ALJ observes that the claimant's last employer, American
 21 Building Maintenance, said the claimant had good attendance,
 22 acceptable work, and was able to follow instructions. (Tr. 15, Ex.
 23 5E/1). Dr. Everhart found test results did not suggest difficulty
 24 with executive functioning, attention, concentration and intellect
 25 were within normal limits, and persistence and pace were good.
 26 (Tr. 15; Ex. 11F/4, 7).

27 An ALJ may reject any medical opinion that is brief,
 28 conclusory, and inadequately supported by clinical findings, as

1 are the bulk of the records from Spokane Mental Health. See
2 *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005).

3 The ALJ opined plaintiff has (1) mild restrictions in
4 activities of daily living; (2) moderate difficulties in social
5 functioning; (3) mild difficulties in concentration, persistence
6 or pace; and (4) has not experienced any episodes of
7 decompensation of extended duration. He found the evidence fails
8 to establish the presence of the "paragraph C" criteria (Tr. 15-
9 16).

10 The evidence the ALJ relied on is specific and legitimate for
11 purposes of weighing contrary treating opinions. There was no
12 error.

13 **C. Credibility**

14 Plaintiff alleges the ALJ failed to give clear and convincing
15 reasons for his credibility determination, ECF No. 13 at 16.

16 The Commissioner responds that the determination is free of
17 error, ECF No. 18 at 15-19.

18 The ALJ found the objective medical evidence does not support
19 the level of limitation claimed (Tr. 17). Mental health records
20 begin in April 2007, six months after onset. Plaintiff reported he
21 had depression all his life. During the fall of 2006 his symptoms
22 felt worse than usual for about a month. This was when he quit his
23 job. He reported shyness since childhood and had always
24 experienced social problems. Yet, as the ALJ points out, plaintiff
25 worked for 14 years as a janitor despite reportedly experiencing
26 lifelong depression and social anxiety, and apparently quit his
27 job after just one month of increased symptoms (Tr. 17, referring
28 to Tr. 246).

1 In May 2007, examiners Carl Bonner, M.D., and Matthew Layton,
 2 M.D., Ph.D., note plaintiff's concentration was good and his
 3 judgment intact, as the ALJ observes (Tr. 17, referring to Tr.
 4 218). The ALJ, as noted, considered Dr. Everhart's psychological
 5 evaluation. These contradict plaintiff's assertion his memory and
 6 concentration are "bad" (Tr. 15, Ex. 4E/6).

7 Credibility determinations bear on evaluations of medical
 8 evidence when an ALJ is presented with conflicting medical
 9 opinions or inconsistency between a claimant's subjective
 10 complaints and diagnosed condition. See *Webb v. Barnhart*, 433 F.3d
 11 683, 688 (9th Cir.2005).

12 It is the province of the ALJ to make credibility
 13 determinations. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir.
 14 1995). However, the ALJ's findings must be supported by specific
 15 cogent reasons. *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9th Cir.
 16 1990). Once the claimant produces medical evidence of an
 17 underlying medical impairment, the ALJ may not discredit testimony
 18 as to the severity of an impairment because it is unsupported by
 19 medical evidence. *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir.
 20 1998). Absent affirmative evidence of malingering, the ALJ's
 21 reasons for rejecting the claimant's testimony must be "clear and
 22 convincing." *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir.1995).
 23 "General findings are insufficient: rather the ALJ must identify
 24 what testimony not credible and what evidence undermines the
 25 claimant's complaints." *Lester*, 81 F.3d at 834; *Dodrill v.*
 26 *Shalala*, 12 F.3d 915, 918 (9th Cir.1993).

27 The ALJ found plaintiff less than credible based on his
 28 inconsistent statements, activities, and allegations unsupported

1 by clinical findings (Tr. 15-16).

2 The ALJ observes plaintiff's activities include caring for
3 his own needs as well as those of his family, in particular since
4 his wife allegedly suffers significant mental health limitations.
5 (Tr. 15-16). The ALJ is correct. Plaintiff has had primary custody
6 of his two children, ages eight and eleven, and his spouse has not
7 always lived in the home. (Tr. 250). By the time of Dr. Everhart's
8 examination in October 2009, plaintiff and his wife had three
9 children (Tr. 377). He shops and uses public transportation,
10 despite stating he cannot be around other people or leave his home
11 (Tr. 16; Ex. 4E/4, 1F/9, and 11F/1).

12 The ALJ's reasons are clear, convincing, and fully supported
13 by the record. *See Thomas v. Barnhart*, 278 F.3d 947, 958-959 (9th
14 Cir. 2002)(proper factors include inconsistencies in plaintiff's
15 statements, inconsistencies between statements and conduct, and
16 extent of daily activities).

17 **E. RFC assessment and Step Four**

18 Plaintiff alleges the ALJ's RFC assessment fails to include
19 all of his limitations, ECF No. 13 at 18-19, and the step four
20 finding is inadequate, ECF No. 13 at 19-21.

21 This is restatement of plaintiff's argument that the ALJ
22 improperly weighed the medical evidence.

23 The ALJ is responsible for reviewing the evidence and
24 resolving conflicts or ambiguities in testimony. *Magallanes v.*
25 *Bowen*, 881 F.2d 747, 751 (9th Cir.1989). It is the role of the
26 trier of fact, not this court, to resolve conflicts in evidence.
27 *Richardson*, 402 U.S. at 400. The court has a limited role in
28 determining whether the ALJ's decision is supported by substantial

1 evidence and may not substitute its own judgment for that of the
2 ALJ, even if it might justifiably have reached a different result
3 upon de novo review. 42 U.S.C. § 405(g).

4 In hypotheticals posed to a vocational expert, the ALJ must
5 only include those limitations supported by substantial evidence.
6 *Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 886 (9th Cir.2006). The
7 ALJ's decision is supported by substantial evidence and free of
8 legal error.

9 **CONCLUSION**

10 Having reviewed the record and the ALJ's conclusions, this
11 court finds that the ALJ's decision is free of legal error and
12 supported by substantial evidence..

13 **IT IS ORDERED:**

14 1. Defendant's Motion for Summary Judgment, **ECF No. 17**, is
15 **GRANTED**.

16 2. Plaintiff's Motion for Summary Judgment, **ECF No. 12**, is
17 **DENIED**.

18 The District Court Executive is directed to file this Order,
19 provide copies to the parties, enter judgment in favor of
20 defendant, and **CLOSE** this file.

21 DATED this 4th day of June, 2012.

22 s/ James P. Hutton
23 JAMES P. HUTTON
24 UNITED STATES MAGISTRATE JUDGE
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